



2. My official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office, which is responsible for receiving, processing, and responding to all FOIA, 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE. In that capacity, I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding the processing of FOIA and Privacy Act requests received by ICE, as well as the status, processing, and productions of ICE's federal FOIA litigations. In connection with my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of FOIA and the Privacy Act. In addition to responding to requests for information, I am also familiar with ICE FOIA's workload as well as the supporting metrics regarding the office's capabilities around processing and productions.

3. I make this declaration in my official capacity based on my personal knowledge, my review of records kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

## **II. CURRENT STATISTICS REGARDING FOIA REQUESTS SUBMITTED TO ICE**

4. As of April 7, 2021, the ICE FOIA Office was processing approximately 5,687 open FOIA requests. As of April 7, 2021, there was a backlog of 5,088 cases and there were 180 open litigations.<sup>1</sup> As of the date of this declaration, there were 181 cases in litigation.

5. Beginning in fiscal year ("FY") 2018, the ICE FOIA Office experienced a substantial and dramatic increase in the number of FOIA requests received by ICE compared to previous years. In FY 2015, the ICE FOIA Office received 44,748 FOIA requests; 63,385 FOIA requests were received in FY 2016. The number of requests received decreased in FY 2017 to 47,893 but was then followed by a record high of 70,267 FOIA requests in FY 2018. In FY 2019, that number increased even further to a total of 123,370 requests received. In FY 2020, the ICE FOIA Office received 114,475 requests.

6. In short, between FY 2017 and FY 2020, the ICE FOIA Office experienced approximately a 240% increase in FOIA requests. This dramatic increase in ICE FOIA's workload is attributed to an increase in the number of referrals ICE received from USCIS and the increased public interest in the Department's operations as they pertained to Presidential and/or

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<sup>1</sup> Backlog cases are those that have been pending for over 20 days.

Executive Orders during that period and subsequent guidance from the Secretary of Homeland Security.

### **III. ICE FOIA OFFICE’S STAFF LEVELS AND WORKLOAD**

7. In addition to the increasing volume of FOIA requests, ICE has also experienced an increase in the complexity of FOIA requests, both in terms of volume and substance. For example, it is now not uncommon to see FOIA requests with 50 to 60 subparts comprising several pages, searches of numerous program offices, and a universe of records that has thousands of pages to review and process. These FOIA requests take considerably longer to process due to extensive searches that are usually required, as well as the intricacies of the documents and/or data produced. In FY 2019, one FOIA requester alone – a data clearing house – filed more than 370 FOIA requests seeking extensive data extracts. In FY 2020, the same requester filed more than 480 similar FOIA requests.

8. All these factors have more than doubled the ICE FOIA Office’s overall workload in comparison with the same date for FY 2017. In response to the increasingly heavy workload, the ICE FOIA Office has adopted the court-sanctioned practice of generally handling backlogged requests on a “first-in, first-out basis,” which ensures fairness to all FOIA requestors by not prioritizing one request over another. For FY2020, the ICE FOIA Office closed 79,081 cases and 17,060 referrals from USCIS.

9. The ICE FOIA Office currently has FOIA specialists dedicated to processing FOIA requests solely at the administrative level. The processors are responsible for responding to the original FOIA requests and, if necessary, reprocessing remands on appeal. In FY 2019, these FOIA processors completed and closed out 65,213 FOIA requests. The ICE FOIA Office has many unfilled positions due to the difficulty in the hiring process during COVID-19 operations.

### **IV. WORKLOAD OF THE ICE FOIA LITIGATION PROCESSING UNIT**

10. A consequence of the increasing complexity and volume of ICE FOIA’s workload (see paragraphs 5-9) is that more of those FOIA requests become subject to litigation in U.S. District Court.

11. The ICE FOIA Litigation Processing Unit is currently processing 181 active FOIA litigations as of the date of this declaration. There are currently 67 court-ordered FOIA litigation

cases that have rolling productions, which yield a monthly litigation review and processing page count of between 28,000-35,000 pages, with a total of 11,000-18,000 pages being released every month. ICE's normal processing rate is 500 pages per month, per case. Additionally, there are cases that are added each month that increase the case list and resulting productions. With the monthly additions, the four (one is currently on maternity leave) full-time paralegals will be required to process nearly 40,000 pages per month. These page-count numbers do not take into account the more than 60 additional FOIA lawsuits that require a single versus rolling production.

12. The ICE FOIA Litigation Processing Unit also drafts, assigns, and tracks any and all searches for responsive documents in response to FOIA litigations. These search taskings can span dozens of ICE program and field offices and require the Unit to keep track of hundreds of thousands of responsive documents, as well as all of the offices' search documentation.

13. The ICE FOIA Litigation Processing Unit also has other duties, in addition to processing documents pursuant to litigation. For example, they also prepare various reports, process Congressional inquiries, redact Prison Rape Elimination Act ("PREA") and Office of Detention Oversight ("ODO") reports, send out FOIA (b)(4) submitter notices on relevant cases, and handle consults and referrals from other agencies as they come in. The Unit also supports attorneys in the ICE Office of the Principal Legal Advisor on federal FOIA litigations, assisting in the creation of *Vaughn* indexes, declarations, and other necessary filings.

14. The members of the ICE FOIA Litigation Processing Unit also manage a host of other administrative duties, including (but not limited to) monitoring the ICE FOIA inbox (which receives 12,000-18,000 emails annually), processing all classified consults and referrals, scheduling productions, preparing clearance emails, and preparing other correspondence to requesters.

15. In total, each member of the ICE FOIA Litigation Processing Unit can process on average 100-300 pages per day, depending on the complexity of the documents, and still keep up with their overall job requirements.

16. In order to meet its obligations for all cases in litigation, and to ensure that all of the FOIA matters progress so that each requester can receive a response, the ICE FOIA Office typically cannot process more than 500 pages per month for each litigation case. Any increase in one matter would hinder ICE FOIA's ability to process records for productions in other matters.

17. Moreover, the ICE FOIA Office typically cannot *produce* a set number of pages per month. Depending on the volume of records located in the search tasking phase of the administrative stage and/or FOIA litigation, if the Court ordered ICE FOIA to *produce* a certain number of pages per month, it is entirely plausible that the processors would have to review hundreds, or even thousands, of additional pages on top of the 500 pages that are attainable, in order to get to the requisite production number. ICE FOIA is incapable of achieving this outcome based on the limited resources available and its competing priorities, litigation and non-litigation deadlines, and sheer volume of overall work.

## **V. PROGRESS ON THE INSTANT CASE**

18. ICE has conducted a search in response to Plaintiff's FOIA request. That search has been completed and ICE has located 8,626 pages of potentially responsive records. ICE has agreed to begin processing 500 pages per month, starting this month, April 2021. ICE anticipates making its first production during the week of May 3, 2021.

## **V. JURAT CLAUSE**

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 15 day of April 2021.

FERNANDO PINEIRO  
JR

Digitally signed by FERNANDO  
PINEIRO JR  
Date: 2021.04.15 13:22:59 -04'00'

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